

From: Brian Horakh
To: Microsoft ATR
Date: 11/16/01 11:45pm
Subject: Professional opinion about settlement

For the record my name is Brian A. Horakh, my phone number is 760-944-7660, I am the CTO of a small software company. I am an MCSE (Microsoft Certified Systems Engineer), and also hold certifications from Compaq, Novell, Linux, Sun, and Oracle, I program in 14 different languages, on 3 different platforms, i've written books on topics such as system security, and high availability. In otherwords this settlement will directly affect my career - so I figured I ought to write in an give you my two cents.

I have read the proposed draft and concluded that you are falling into the same Microsoft trap that they have so craftily woven for so many of their competitors. There are big gaping holes which prevent, or at least indefinitely delay enforcement, once this deal is signed they'll literally have to kill a dozen people in their business praticies before it makes it back to court - because without a homicide it's going to be really hard to prove dirty business tactics, but you can bet they're going to keep playing dirty.

ou need to look at their implementation of contractual history with other companies (i'll provide a few highlights):

- ~1998 Microsoft licenses Java, embeds into Internet explorer
- ~1999 Microsoft extends Java (knowing that Sun will get mad and sue them)
- ~2000 Sun gets mad and sues them.
- ~2001 Sun gets injunction, which says Microsoft can't use Java. - Microsoft drops Java support from Internet Explorer, effectively killing the language [it's still breathing, but trust me it's dead] .. whats ironic is Microsoft comes out smelling like a rose, in court they say "we have to have the freedom to do it our way, Sun told us it's their way or the highway, we took the highway" .. no legal expert in the world even consider accusing them of anti-competitive business praticies from dropping Java support, after all Sun made them do it. But Sun was setup to fail, they were played like a puppet from day 1.

Want another one:

- ~1992 Microsoft wants to own the Internet, realizes the way to do this through the browser.
- ~1995 Microsoft have a good market share, but is facing trouble due to anti-competitive behavior with Netscape, mostly because they are giving their software away for free - and everybody knows it's just to kill Netscape, but nobody cares. Meanwhile netscape begins to feel pressure.
- ~1997 Microsoft settles with court, continues to apply pressure to OEM's under the table. I can't tell you how many stories i've heard where they've done this - NOBODY comes forward because it would mean the end of your career.
- ~1997 - Microsoft side steps the Netscape arrangement by "embedding" IE inside the operating system, ... blah blah blah .. stuff happens .. freedom to innovate (tell me one thing they've Innovated)
- ~2001- it's great, now a webpage can crash by Operating system (Which btw: I blame you guys for since you made them "take it into the OS"). They now have a ~95% share??

.. I can keep going on and on and on .. just give me some time.

The bottom line: YOU NEED TO RETHINK YOUR PLAN - go for broke, don't settle for less, otherwise you certainly aren't doing this industry, or the consumer a favor. Explain to the judge how they've consistently violated every agreement anytime it was in their best interest. Explain how the current arrangement will basically ensure that you're out of their hair, and they're free to do business as usual. Please reconsider the punitive damages for Microsoft, make them redo their licensing, make them publish

ALL protocols they use as PUBLIC DOMAIN [okay at least no licensing which prevents the Linux folks from building an interoperable and better product].. please think about it.

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